

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. CV 11-0661 RB/KBM
CR 09-0678 RB

ERIC RAYMOND MACIAS,

Defendant.

MEMORANDUM OPINION AND ORDER TO SHOW CAUSE

This matter is before the Court, *sua sponte* under 28 U.S.C. § 2255 R.4, on Defendant's Motion Pursuant To 28 U.S.C. § 2255 To Vacate, Set Aside, Or Correct Sentence By A Person In Federal Custody (CV Doc. 1; CR Doc. 47) filed on July 27, 2011.

On June 15, 2010, the Court entered judgment (CR Doc. 44) on Defendant's conviction. Defendant did not appeal the conviction or sentence, and thus his conviction became final in late June, 2010, when the time for filing an appeal expired. *See United States v. Prows*, 448 F.3d 1223, 1227 (10th Cir. 2006); *and see United States v. Sandoval*, 371 F. App'x 945, 948 n.2 (10th Cir. 2010) ("2009 Amendments to the Federal Rules of Appellate Procedure extended the time to appeal a final judgment in a criminal case from ten to fourteen days"). On July 27, 2011, approximately thirteen months after his conviction became final, Defendant filed this § 2255 motion.

Defendant will be required to show cause why his § 2255 motion should not be dismissed as untimely. *See* § 2255 R. 4(b). The applicable one-year limitation period in § 2255 had expired when Defendant filed his § 2255 motion, *see United States v. Willis*, 202 F.3d 1279, 1280 (10th Cir. 2000), and the motion must be dismissed unless he presents grounds for tolling, *see United States*

v. Cordova, No. 99-1306, 1999 WL 1136759, at **1 (10th Cir. Dec 13, 1999). The Court raises the time bar to Defendant's § 2255 motion *sua sponte* and will allow him an opportunity to respond. *See Hare v. Ray*, No. 00-6143, 2000 WL 1335428, at **1 (10th Cir. Sept. 15, 2000) (noting that timeliness of § 2254 petition was raised *sua sponte* and allowing response); *Hines v. United States*, 971 F.2d 506, 507-09 (10th Cir. 1992) (same for procedural default in § 2255 proceeding). Failure to respond to this Order or otherwise show cause may result in dismissal of the § 2255 motion without further notice. *See* § 2255 R.4.

IT IS THEREFORE ORDERED that, within thirty (30) days from entry of this order, Defendant file a response to this Order showing cause, if any, why his § 2255 motion should not be dismissed as untimely.


UNITED STATES CHIEF MAGISTRATE JUDGE